

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

December 17, 2008

BY E-MAIL AND U.S. MAIL

Washington, DC 200

Re: Freedom of Information Act Appeal

Dear [REDACTED]

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. § 2-531 *et seq.* (the "DC FOIA"), dated October 3, 2008 (the "Appeal"). We forwarded the Appeal to the District of Columbia Fire and Emergency Medical Services Department ("FEMS") with a request for a response. The FEMS responded by letter dated October 21, 2008 ("FEMS Response").

In your initial FOIA Request dated August 11, 2008, you sought materials, in summary, relating to the following:

1. The cause of and response to the March 12, 2008 fire at [REDACTED] and Capt. [REDACTED] response to said fire;
2. FEMS disciplinary action against [REDACTED] since March 12, 2008;
3. Case Number(s) [REDACTED] & [REDACTED];
4. [REDACTED] April 17, 2008 memorandum to Assistant Fire Chief Schultz;
5. [REDACTED] June 4 & 28 memorandums to Fire Chief Rubin;
6. [REDACTED] July 2, 25, & 31 memorandums to Rubin;
7. Reasons for the order issued to [REDACTED] to submit to a Fitness for Duty evaluation/assessment;
8. Issues raised or statements made or attributed to [REDACTED] concerning gender or racial discrimination within DCFD; and

9. [REDACTED] personnel and medical file(s).

FEMS responded to your FOIA Request by letter dated September 19, 2008, notifying you under D.C. Code § 2-534(a)(2) & (6) the materials you requested are exempt from disclosure as these materials contain information of a personal nature, prohibited from being released by other applicable statute(s), and because the DC FOIA statute may not be used to expand rights to discovery in administrative or legal proceedings.

In a letter dated November 4, 2008, we ordered FEMS to submit the documents purportedly exempt under the applicable exemptions for an *in camera* inspection. On December 12, 2008, FEMS provided our Office with the attached *Vaughn* Index, describing the records and the asserted statutory exemption.

Discussion

It is the public policy of the District government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code, 2001 Ed. § 2-531. In aid of that policy, the DC FOIA creates the right "to inspect ... and ... copy any public record of a public body" *Id.* § 2-532(a). Yet that right is subject to various exemptions, which may form the basis for a denial of a request. D.C. Official Code, 2001 Ed. § 2-534.

Our Office has completed the *in camera* inspection, and has determined all of the documents listed in the *Vaughn* index must be released. Although FEMS exempted some of the documents under D.C. Code § 2-534(a)(2) & (6), primarily because some of these documents were in another individual's personnel file, we find that because the requester, through Counsel, was the author of these documents, these documents cannot be withheld from Appellant. Further, in this instance, the pending litigation exemption relied upon by FEMS is also an improper basis to withhold the documents from Appellant.

Additionally, the requester sought a copy of her personnel and medical file(s). Initially, FEMS stated it could not disclose these files to Appellant under D.C. Code § 2-534(a)(2) & (6). Subsequently, on appeal, FEMS now asserts those files are not in its possession. Rather, FEMS claims the personnel and medical records are in the possession of the D.C. Office of Human Resources. As you are aware, the DC FOIA statute only requires an agency to turn over records in its possession that are not exempt from disclosure. Therefore, we REMAND this matter to FEMS and ORDER within five (5) days of the date of this decision that FEMS provide all of the documents listed in the attached *Vaughn* index to Appellant.



Page 3

If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Regards,



Runako Allsopp
Deputy General Counsel to the Mayor

cc:

